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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re Y. G., et al., Persons Coming Under
the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

OLIVIA G. et al.,

Defendants and Appellants.

F051943

(Super. Ct. Nos. JD108997
& JD108998)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Robert J. Anspach, Judge.

Therese Foley, under appointment by the Court of Appeal, for Defendant and Appellant, Olivia G.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant, O. G.

Bernard C. Barmann, Sr., County Counsel, and Susan M. Gill, Deputy County Counsel, for Plaintiff and Respondent.

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*Before Harris, Acting P.J., Levy, J., and Cornell, J.

INTRODUCTION

On November 17, 2005, juvenile dependency actions were filed pursuant to Welfare and Institutions Code section 300 for the two minor children of Olivia G. and O. G.¹ On December 18, 2006, the juvenile court terminated its jurisdiction after ordering sole physical custody of the children to O. G. The court ordered one hour weekly visitation for Olivia G. that “may be increased or decreased.” The minute order, however, states that “visits for mother can be increased or decreased, as the custodial parent deems necessary.”

On appeal, Olivia G. contends the additional language in the minute order, granting discretion to the custodial parent to increase or decrease the length of weekly visitation, was erroneously added. Olivia G. further argues the additional language is a clerical error that does not reflect the juvenile court’s ruling. The Kern County Department of Human Services (Department) filed notice that it had no interest in this issue and was not submitting a brief. O. G. filed notice that he was submitting the matter to our court without filing a brief. We find the additional language in the minute order to be a clerical error and will remand to the trial court for it to correct its minute order.

FACTS AND PROCEEDINGS

The section 300 petitions filed in November 2005 alleged that Olivia G.’s children were at substantial risk of suffering serious physical harm or illness because Olivia G. was suffering major postpartum depression and had thoughts of harming her children as well as suicidal thoughts. Olivia G. also had difficulty accepting or following the medication regimen to treat her mental health problems. The petitions alleged that O. G. was aware of the precarious state of his wife’s mental health but failed to protect the children. The petitions further alleged there were incidents of domestic violence between the parents.

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

At the detention hearing on November 18, 2005, the court found O. G. to be the children's presumed father and ordered the children detained. The court ordered supervised visitation between the children and their parents.

A social worker's report prepared for the December 29, 2005, jurisdiction hearing noted that O. G. acknowledged an incident of spousal abuse and he admitted placing his children at risk. O. G. pled guilty to misdemeanor spousal abuse and reported he would attend classes at a counseling center as part of the criminal case. O. G. understood his wife was suffering from depression and needed to take prescribed medication.

Olivia G. admitted to the social worker that she suffered from severe postpartum depression and other mental health problems. Mental health providers reported Olivia G. suffered from major depression with psychotic features. Olivia G. had attempted suicide on many occasions. Olivia G. had past hospitalizations in psychiatric facilities. Olivia G. was resistant to taking her medication. At the conclusion of the jurisdiction hearing, the court found the allegations of the petition true and that the children were dependents as described in section 300, subdivision (b).

The disposition hearing commenced on January 31, 2006. The court found the children to be dependents and placed them with their father under a family maintenance plan. The court ordered the removal of the children from their mother's physical custody. The court ordered O. G. to participate in domestic violence counseling and reunification services were ordered for appellant. The court ordered supervised visits between the children and Olivia G..

Over the ensuing six months, appellant participated in mental health counseling and took prescribed medications but still experienced another mental health breakdown leading to hospitalization. Olivia G.'s visitations with her children were infrequent and she had difficulty managing the children's behavior. O. G. regularly attended domestic violence counseling classes. The children were healthy and appropriately housed. Social

workers had some lingering concerns about whether O. G. appreciated the risk posed to the children from Olivia G.'s mental health problems.

On June 29, 2006, the juvenile court conducted six-month review hearings. The court found appellant had made minimal progress and minimally acceptable effort to avail herself of reunification services. The court found returning the children to their mother's custody would not be in the children's best interest. The court also found there was a substantial probability the children could be returned to appellant's custody within six months and extended reunification services an additional six months. The court ordered family maintenance services for O. G. another six months.

Over the following months, appellant complied with her psychiatric medication plan, but was not consistently engaged in other aspects of her mental health treatment. Appellant participated in domestic counseling classes and showed progress although her attendance was inconsistent. Appellant missed most of her weekly visits with her children. The social worker recommended reunification services for appellant be terminated. O. G. had been fully compliant with all aspects of the family maintenance plan and had made considerable progress in addressing the causes of risk that led to the children's dependency. The social worker recommended sole legal and physical custody be given to O. G.

Combined 12-month review hearings were held on December 18, 2006. The juvenile court found appellant had made minimal progress toward alleviating or mitigating the causes necessitating the children's placement out of appellant's care. The court found appellant had failed to participate regularly and make substantial progress in the court-ordered treatment program. The court found that returning the children to appellant would create a substantial risk of detriment to the children's safety, protection, physical or emotional well-being. The court found reasonable services and efforts had been made to reunify the children with their mother and ordered termination of family reunification services to appellant.

The court ordered supervision of the children be terminated, finding the father had done everything necessary under the case plan to address the causes necessitating court supervision of the children. The court awarded joint legal custody to both parents and sole physical custody to the father. The court ordered the appellant could have weekly visitation with the children and advised O. G. that the visits should be supervised but left it in O. G.'s discretion whether to supervise the mother's visits. The court noted that the mother could have "visitation weekly for one hour but that may be increased or decreased." The minute order, however, noted that the mother's one hour visits with the children were to occur weekly and "visits for the mother can be increased or decreased, as the custodial parent deems necessary."

DISCUSSION

Appellant contends the minute order of the December 18, 2006, 12-month review hearings contains a clerical error because it adds language to the juvenile court's oral pronouncement. We agree and will remand for the juvenile court to correct its minute order.

Generally, when the record is in conflict, it will be harmonized if possible. (*People v. Smith* (1983) 33 Cal.3d 596, 599.) The additional language in the minute order does something the juvenile court's oral pronouncement does not do, it grants the custodial parent discretion to increase or decrease the length of visitation to the non-custodial parent. It does not appear possible, therefore, to harmonize the two statements of the court's order.² Where there is a conflict, the court's oral pronouncement in court controls over the clerk's minute order. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.)

Although the juvenile court was willing to give the father discretion concerning whether to maintain supervised visits between the children and appellant, the court did

² We note that the juvenile court did not sign the clerk's minute order. Our analysis of this issue could well have been different had the court done so.

not grant this discretion to the father in its oral pronouncement of weekly visitation. The court awarded the father sole physical custody of the children but granted both parents joint legal custody of the children. Family Code section 3003 states that “‘Joint legal custody’ means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” The court did not grant the father sole legal custody pursuant to Family Code section 3006.³

Family Code section 3007 states that: “‘Sole physical custody’ means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.” Consistent with this statute, it would appear that where one parent has sole physical custody of a child that parent is still subject to court orders concerning visitation. This would especially be true, where, as here, both parents maintain joint legal custody over their children.

Entering the judgment of the trial court in the minutes is a clerical function. Any discrepancy between the minutes and oral pronouncement of a sentence is presumed to be the result of clerical error. The oral pronouncement of sentence prevails in cases where it deviates from that recorded in the minutes. (*People v. Price* (2004) 120 Cal.App.4th 224, 242.) Courts may correct clerical errors at any time. Appellate courts that have properly assumed jurisdiction may order the correction of clerical documents. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We will therefore remand to the juvenile court for it to correct the clerical error in its minute order to remove the phrase “as the custodial parent deems necessary” from the court’s order that “visits for the mother can be increased or decreased.”

DISPOSITION

³ Family Code section 3006 provides: “‘Sole legal custody’ means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.”

The case is remanded to the juvenile court for it to correct the clerical error in its minute order to remove the phrase “as the custodial parent deems necessary” from the court’s order that “visits for the mother can be increased or decreased.” The judgment is affirmed.